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Attorney for Robert D. Miller Jr., Acting United States Trustee

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON

In re	Case No. 09-6082-HO (Reference withdrawn in Bankruptcy Case No. 08-36637-tmb11)
Stayton SW Assisted Living, LLC dba Lakeside Assisted Living Community,	LEAD CASE
	THE FOLLOWING CASES ARE JOINTLY ADMINISTERED WITH 08-36637-tmb11
Medallion Assisted Living Limited Partnership, dba Medallion Senior Living,	Nos. 08-36638-tmb11
Colonial Gardens, LLC, aka Colonial Gardens Residential Care Community,	08-36655-tmb11
Hendersonville Senior Living, LLC,	08-36673-tmb11
Champlin, LLC	08-37147-tmb11
Court at Clifton Park, LLC,	08-37154-tmb11
Court at Greece, LLC,	08-37158-tmb11
Court at Orchard Park, LLC,	08-37161-tmb11
Kearney Senior Living, LLC	08-37152-tmb11
McCook Senior Living, LLC,	08-37148-tmb11
Montclair Senior Living, LLC,	08-37159-tmb11
Sanddollar Court Memory Care, LLC	08-37157-tmb11

1	Seward Senior Living, LLC,	08-37168-tmb11
2	St. George Senior Living, LLC	08-37155-tmb11
3	Vancouver Care, LLC,	08-37156-tmb11
4	Vegas Assisted Living, LLC,	09-30151-tmb11
5	Village at Greece, LLC,	08-37149-tmb11
6	Wayne Senior Living, LLC,	08-37146-tmb11
7	W-E Specialized Care, LLC,	08-37151-tmb11

8 Debtors.

**UNITED STATES TRUSTEE'S
RESPONSE TO ORDER TO SHOW
CAUSE WHY PATIENT CARE
OMBUDSMAN SHOULD NOT BE
TERMINATED**

HEARING REQUESTED

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15 The Acting United States Trustee, Robert D. Miller Jr., by and through Trial

16 Attorney Carla G. McClurg, hereby responds to the court's order to show cause why the

17 appointment of the patient care ombudsman in the above jointly administered cases

18 should not be terminated (docket #303).

19 This court withdrew the reference of the bankruptcy court in these jointly

20 administered bankruptcy cases pursuant to an order entered on April 29, 2009. Before

21 this court withdrew the reference, on January 28, 2009, Judge Trish M. Brown ordered

22 the United States Trustee to appoint a patient care ombudsman in all of these jointly

23 administered cases (except four New York debtors that do not operate senior living

24 facilities¹) to monitor the quality of patient care, file reports, and take immediate action

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26 ¹ The four cases in which Judge Brown did not order the United States Trustee to appoint a patient care ombudsman include: In re Court at Clifton Park, LLC, Case No. 08-37154-tmb11; In re Court at Greece, LLC, Case No. 08-37158-tmb11; In re Court at Orchard Park, LLC, Case No. 08-37161-tmb11; and In re Village at Greece, LLC, Case No. 08-37149-tmb11.

1 in the event that the quality of patient care declines (docket #124). The United States
 2 Trustee appointed Suzanne Koenig (the “Ombudsman”) as the patient care ombudsman
 3 in these cases on February 4, 2009 (docket #147).²

4 The Bankruptcy Abuse and Consumer Protection Act of 2005 added section 333
 5 to the Bankruptcy Code. Section 333 contains specific provisions regarding the
 6 appointment of a patient care ombudsman within 30 days after the commencement of
 7 any bankruptcy case for a “health care business.” 11 U.S.C. § 333(a)(1). The patient
 8 care ombudsman essentially serves as a patient advocate who is responsible for
 9 monitoring the quality of patient care, reporting to the court on the status of patient care,
 10 and representing the interests of the patients. 11 U.S.C. § 333(b); see Collier on
 11 Bankruptcy ¶ 333.01 (15th ed. 2009).

12 Section 333 of the Bankruptcy Code makes the appointment of a patient care
 13 ombudsman mandatory if the debtor is a health care business “unless the court finds that
 14 the appointment of such ombudsman is not necessary for the protection of patients under
 15 the specific facts of the case.” The language of section 333 is clear that the court must
 16 make a specific finding as to whether a patient care ombudsman is necessary for the
 17 protection of patients in a particular case.

18 The language of section 333 further makes it clear that the well-being of patients
 19 is paramount. Cost is only one of the numerous factors that courts consider in deciding
 20 whether the appointment of an ombudsman is not necessary for the protection of
 21 patients. Courts have considered the following non-exclusive factors:

- 22 (1) The cause of the bankruptcy;
- 23 (2) The presence and role of the licensing or supervising entities;
- 24 (3) The debtor’s past history of patient care;
- 25 (4) The ability of the patients to protect their rights;

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² Suzanne Koenig’s company, SAK Management Services, LLC, was employed in the jointly administered cases pursuant to an order entered on April 29, 2009 (docket # 265).

- 1 (5) The level of dependency of the patients on the facility;
- 2 (6) The likelihood of tension between the interests of the patients and the
- 3 debtor;
- 4 (7) The potential injury to the patients if the debtor drastically reduced its
- 5 level of patient care;
- 6 (8) The presence and sufficiency of internal safeguards to ensure appropriate
- 7 level of care; and
- 8 (9) The impact of the cost of an ombudsman on the likelihood of a successful
- 9 reorganization.

10 In re Valley Health System, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008); In re Alternate
11 Family Care, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007).

12 The Ombudsman is the only professional that is tasked with evaluating the
13 quality of care afforded to these vulnerable residents. The United States Trustee has
14 consulted with the Ombudsman regarding this court's order to show cause. The United
15 States Trustee is convinced that the Ombudsman's services are necessary for the
16 protection of the patients of the facilities in the cases in which she is appointed. The
17 Ombudsman's reports filed thus far in these cases are the best proof that Congress was
18 right to be concerned about patient welfare in bankrupt facilities.

19 The court should hold a hearing and make specific findings consistent with
20 section 333 of the Bankruptcy Code before determining if the Ombudsman should be
21 terminated. The language of the statute suggests that those opposing an ombudsman
22 bear the burden of demonstrating that an ombudsman is not necessary. To do so, they
23 must present specific facts showing that patients are otherwise protected from the risks
24 that led Congress to mandate an ombudsman for financially distressed health care
25 businesses.

1 DATED this 21st day of September, 2009.

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3 Respectfully submitted,

4 ROBERT D. MILLER JR.
5 Acting United States Trustee

6 /s/ Carla G. McClurg
7 CARLA G. McCLURG, CSB# 227738
8 Trial Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2009, I served a copy of the foregoing
**UNITED STATES TRUSTEE'S RESPONSE TO ORDER TO SHOW CAUSE WHY
PATIENT CARE OMBUDSMAN SHOULD NOT BE TERMINATED** by mailing a
copy of this document, by United States first class mail, postage prepaid, addressed to the
following:

Oregon Attorney General
Department of Justice
1162 Court St NE
Salem, OR 97301

I further certify that based on the District Court's electronic case filing records, the
following person(s) will be served electronically when the foregoing document is filed
with the court:

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